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12 PHILIP MORRIS USA INC.

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 OAKLAND DIVISION

16 NIKKI POOSHS,

Case No. C 04-01221-PJH-JCS

17 Plaintiff,

} [PROPOSED] ORDER REGARDING  
18 vs. PHILIP MORRIS USA INC.'S  
19 ALTRIA GROUP, INC., *et al.* } OBJECTIONS TO DIRECT-EXAM  
20 Defendants. } EXHIBITS – DR. CUMMINGS

22  
23 Defendant Phillip Morris USA Inc. has objected to certain exhibits set forth below that  
24 Plaintiff has indicated will be used during the direct examination of K. Michael Cummings.

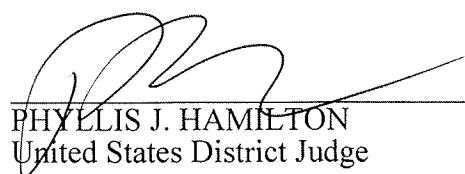
25 Upon consideration of all the papers filed and the parties' argument, the Court rules as  
26 follows:

Plaintiff's Exh No	Objections	Court's Ruling
26	<b>Violates Pretrial Order #6 (design); Irrelevant; 403</b>	<i>overruled</i>
66	Irrelevant; 403 (as to portions regarding a report on smaller babies); Subject to redaction and rule of completeness regarding excised portions, no further objections	<i>overruled</i>
70 A	Object to portions that: <b>Violate Pretrial Order #6 (design); Violate Pretrial Order #22 (aggregate harm)</b> (see 1:15-1:58, 2:05-2:16, 2:16-2:53). Subject to redaction, no further objections	<i>deferred until court sees video</i>
80	Cumulative	<i>overruled</i>
82	Cumulative	<i>overruled</i>
105	Cumulative	<i>overruled</i>
111	<b>Violates Pretrial Ruling #22 (aggregate harm); Irrelevant; 403; Hearsay</b>	<i>sustained</i>
135	<b>Violates Pretrial Ruling #22 (aggregate harm); Irrelevant; 403; Hearsay</b>	<i>sustained</i>
137	Subject to redactions agreed on by parties, no further objections	<i>approved <del>sust</del></i>
172	Previously excluded by Court as design evidence (Jan. 21, 2016 Tr. at 593-94); <b>Violates Pretrial Order #6 (design)</b>	<i>sustained</i>
180	Irrelevant; 403	<i>overruled</i>
208	<b>Violates Pretrial Order #6 (design)</b>	<i>deferred until court sees video</i>
218	<b>Violates Pretrial Order #6 (design); Hearsay; Outside scope of expertise</b>	<i>sustained</i>
228	<b>Violates Pretrial Order #6 (design); Irrelevant; Unfair prejudice</b>	<i>sustained</i>

Plaintiff's Exh No	Objections	Court's Ruling
1631	Previously excluded by Court (Jan. 22, 2016 Tr., 623-24); <b>Violates Pretrial Ruling #22</b> (aggregate harm); Irrelevant; 403; Hearsay	<i>sustained</i>
1765	Irrelevant; 403; Hearsay	<i>sustained</i>
2023	Objection and request to redact last sentence on page 5 ("a) What is the lower delivery level beyond which the smoking act is not reinforced?" as <b>Violate Pretrial Order #6</b> (design); Irrelevant; 403. Subject to redaction, no further objections. (Parties have agreed to all other redactions.)	<i>approved</i>
2317	Subject to redactions agreed on by parties, no further objections	<i>approved</i>
2393	Cumulative	<i>overruled</i>
3429	<b>Violates Pretrial Order #6 (design)</b> ; Outside scope of expertise; Hearsay	<i>sustained</i>
3535	Outside scope of expertise; Irrelevant; 403; If objections overruled, request redaction of portions relating to "race" on PT03405-0016-19 and Charts 9 and 10 on PT03405-0043-44 as Irrelevant; 403	<i>approved</i>
3799	Cumulative; Subject to Court's ruling on portions to be admitted (PM requests Court admit page labeled PM03681-0010 for completeness); portions <b>Violate Pretrial Order #6 (design)</b> ; <b>Violate Pretrial Order #84</b> (non-lung cancer conditions)	<i>overruled with PM addition</i>

IT IS SO ORDERED.

Dated: 1/25/16



PHYLLIS J. HAMILTON  
United States District Judge